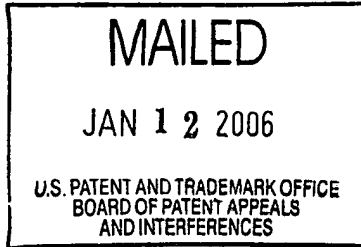


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER J. KIGHT et al.

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Appeal No. 2005-2734  
Application 09/540,011

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ORDER REMANDING TO THE EXAMINER

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Before FLEMING, Chief Administrative Patent Judge, HARKCOM, Vice Chief Administrative Patent Judge, and MACDONALD, Administrative Patent Judge.

PER CURIAM

On consideration of the record, we note that the appeal includes rejections under 35 U.S.C. § 101 involving the statutory nature of at least some of the claims on appeal.

We further note that the evaluation of such claims could possibly be affected by the Commissioner of Patent and Trademarks' published final version of the "Interim

Appeal No. 2005-2734  
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Guidelines for Examination of Patent Application for Patent Subject Matter Eligibility," signed October 26, 2005. This document is located at the following URL:

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

Furthermore, at least one of the rejections under 35 U.S.C. § 101 is directed to whether or not the claims lie within the technological arts. The evaluation of such claims could also be possibly affected by Ex parte Lundgren, 76 USPQ2d 1385 (Bd. Pat. App. & Int. 2005). Thus, we hereby remand this application for reconsideration in view of the "Guidelines" and the recent Ex parte Lundgren decision cited above, and for any other action that the examiner deems appropriate.

REMAND

  
MICHAEL R. FLEMING, Chief  
Administrative Patent Judge

  
GARY V. HARKCOM, Vice Chief  
Administrative Patent Judge

*Allen R. MacDonald*  
ALLEN R. MACDONALD  
Administrative Patent Judge

# BOARD OF PATENT APPEALS AND INTERFERENCES

MRF:psb

Appeal No. 2005-2734  
Application No. 09/540,011

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